

1 So the question of when they knew that they were
2 operating unlicensed in relation for these four paths in
3 relation to what they were telling the Commission is I think
4 extremely relevant.

5 MR. BEGLEITER: Your Honor, I thought the issue of
6 this hearing was when Mr. Milstein and others knew back in
7 the period of April and May. I didn't think we were going
8 into this issue. Clearly, the facts here are virtually
9 stipulated. We will agree that Liberty knew some time
10 before -- before June 30th. I'd like to ask the witness
11 again if --

12 JUDGE SIPPEL: You want to say something,
13 Mr. Nourain?

14 THE WITNESS: Yes, I said around June 16. I
15 didn't say exactly June 16. I said I found out mid-June and
16 that's what I also testified on my deposition. It just
17 happened to be coincidentally June 16th. Now you're
18 referring to that. But I said mid-June I found out after we
19 did the auditing on that.

20 MR. BEGLEITER: One second, Your Honor. The
21 paperwork here is clear. Mr. Nourain knew some time before
22 June 30th and we applied, Liberty applied mid-July and
23 informed the Bureau by STA by mid-July, I forget the exact
24 date, July 23rd or 24th, and that was acknowledged by the
25 Bureau a couple of weeks later.

1 JUDGE SIPPEL: Mr. Weber.

2 MR. WEBER: I kind of see the arguments on both
3 sides here that -- I was also under the assumption that this
4 mini hearing was mainly to see when Liberty initially
5 learned of the illegal operations in the timeframe of May or
6 April to May. However, since candor is always an issue and
7 Mr. Beckner does make a good argument about whether or not
8 they were fully candid when they learned when these paths
9 that had been operating for a year prior to being licensed,
10 when they found that out I think is also an issue which
11 weighs on the witnesses candor. And I guess for that reason
12 the Bureau would have to weigh on the side of allowing it
13 into evidence.

14 JUDGE SIPPEL: Well, the only thing I'm concerned
15 about is inviting this inquiry to extend beyond that which
16 it needs to go. I don't see that happening here. I'm
17 really not too impressed with this evidence as being
18 directly relevant to candor, misrepresentation. But I agree
19 with Mr. Weber that we are dealing with a mixed bag here. I
20 will, I'll -- I'm going to, I'm going to still, I'm just
21 going to reconsider this at a later time. Let's identify
22 he's testified to it, but I'm not prepared at this point to
23 let it in the record as evidence.

24 MR. HOLT: Your Honor.

25 JUDGE SIPPEL: Yes.

1 MR. HOLT: Could I also offer a second independent
2 basis for relevance? Mr. Nourain has testified extensively
3 regarding his practice of commencing, you know, activating
4 paths relating to the period of time following the receipt
5 of COMSEARCH information. He said basically the receipt of
6 the COMSEARCH data is what triggered his activation of
7 paths. This letter reflects a date in 1995 that he was
8 asking for paths to be coordinated on an expedited basis and
9 asked for written confirmation in return. If you refer to
10 Exhibit 30 of Appendix A, you'll see that the paths that
11 were -- each of the paths that were identified during the
12 testimony earlier commenced operating in 1994, a year or so
13 prior to sending this letter to COMSEARCH. So it undermines
14 the credibility of his explanation as an independence basis
15 for receiving this into evidence.

16 MR. BEGLEITER: Your Honor, I frankly don't follow
17 that argument at all. Mr. Nourain explained, testified that
18 he, that in his view COMSEARCH had made a mistake and had
19 failed, had failed to forward more technical information to
20 Pepper & Corazzini. So therefore, the application was --
21 that's what he testified to. And that's right. It took a
22 year before it was realized.

23 THE WITNESS: That's correct.

24 JUDGE SIPPEL: Yes, there's no -- it doesn't seem
25 to me that there doesn't seem to be any direct linkage

1 between a misrepresentation to the Commission and they're
2 trying to resolve what was admittedly a flawed situation.
3 In fact, I think that other exhibit, Exhibit 23, is referred
4 to -- there's a list of these documents that referred to as
5 flawed.

6 MR. BEGLEITER: Yes, Your Honor.

7 JUDGE SIPPEL: That's 24, right?

8 MR. BEGLEITER: It's 24. Activated business with
9 flawed licenses.

10 JUDGE SIPPEL: Yes, TWCV is Exhibit 24. I mean,
11 there's -- well, anyway, I'm just not prepared -- we're
12 going to hear some more testimony from Mr. Price. You can
13 try it again. But I don't see that as bearing directly on
14 what we're here for. And I don't want to invite anything
15 outside what is directly relevant to what I believe to be
16 the scope of the candor issue.

17 MR. BEGLEITER: Your Honor, let me make one final
18 put which is this issue went through exhaustively by both
19 sides in the joint motion. Its invoices are there and both
20 sides have discussed it. It wasn't designated for this
21 mini-hearing.

22 JUDGE SIPPEL: Well, I don't want to get, I don't
23 want to agree with you on that because I think Mr. Weber's
24 got a good point. Candor is always an issue and there's
25 been enough red flags that we're really focused on the

1 issue. But I don't think the focus needs to go to this
2 document. I mean, I'm not convinced of it yet. I'm going
3 to stay with my previous ruling, but at a later time next
4 week you may renew your motion. There may be something more
5 specific to go on after hearing from Mr. Price.

6 BY MR. BECKNER:

7 Q All right. Just a couple of more questions about
8 some additional exhibits. If you would take a look at
9 Exhibit 25, Time Warner Cablevision Exhibit 25, Mr. Nourain.

10 A Yes.

11 Q Which is a copy of a license amendment, a
12 modification application. On the third page of the exhibit
13 with the numbers, I don't see a number on it. 003 it should
14 have. It appears to be your signature. Is that your
15 signature there at the bottom of that page?

16 A Yes.

17 Q And the date is July 17, 1995.

18 A That's correct.

19 Q And you signed this application on July 17 did
20 you? Or is this one you signed blank?

21 A It was the one that I signed before I reviewed the
22 application.

23 Q But you reviewed the application before
24 Mr. Lehmkuhl filed it?

25 A Everything after February 28th, I reviewed.

1 Q Okay.

2 A April 28th.

3 JUDGE SIPPEL: Thank you.

4 BY MR. BECKNER:

5 Q And if you turn to page 035 in the exhibit,
6 there's another FCC form. And again, I just want to ask you
7 on page 036 is your signature and the date, do you recognize
8 that as your signature?

9 A That is correct.

10 Q And again, this is one that you say that you
11 reviewed before it was filed?

12 A Yes.

13 Q Okay. All right. And then I'd like you to take a
14 look at Exhibit 27, Time Warner Cablevision Exhibit 27.

15 A I have that.

16 Q Now, I notice that, well, let me ask you. Did you
17 review this STA request before it was filed? And I'll just
18 draw your attention to the fact that it appears that
19 Mr. Price is the one who signed it.

20 A I know I reviewed everything I signed.

21 Q I understand that.

22 A I don't recall.

23 Q That's why I was pointing out to you that it
24 doesn't look like you signed this one. I wanted to know if
25 you reviewed it.

1 A I don't recall.

2 Q Okay. Do you know of any reason why Mr. Price
3 signed this instead of you?

4 A No.

5 Q You weren't on vacation or unavailable at the time
6 immediately before July 24th?

7 A Oh --

8 Q 1995.

9 A I don't remember.

10 MR. BECKNER: All right. All right, Your Honor.
11 That's all the questions that I have at this time.

12 JUDGE SIPPEL: All right, Mr. Holt.

13 MR. BECKNER: Just for the record, I've not
14 reviewed the stack of documents that we received yesterday
15 and may ask fully to examine based on those documents.

16 JUDGE SIPPEL: All right. I think in light of my,
17 in my last ruling, I think you have an idea of the scope and
18 the timeframe that I'm particularly interested in. So I'm
19 hoping that that's what you're going to limit your focus to.
20 I'm not saying that you're cut off from doing anything after
21 -- with any document that's dated after April, but it's
22 going to be harder to convince me to bring him back for all
23 the documents that run May, June and July than it will be if
24 you find something in February, March or April.

25 MR. BECKNER: No, I understand. I mean, with

1 respect to the previous exhibit, the Commission issued a
2 3LEB request with Liberty that said tell us about all of
3 your unlicensed paths. The first one and that's in evidence
4 here. And Liberty responded with two letters dated June 16
5 and they identified 15 paths. They did not identify the
6 paths that were in the tendered exhibit which we've not
7 admitted because apparently, well, I don't know. They just
8 didn't identify them. And the reason why I was offering
9 that exhibit is to show with the witness's testimony as best
10 he was able to remember when they knew about these four
11 additional paths. Now, it's in the record, of course, that
12 they ultimately did identify four additional paths as
13 Mr. Begleiter said when they filed STA requests with them on
14 July 24th. But the question is whether or not at the time
15 they made the statements on June 16 which turned out to be
16 inaccurate and they knew they were inaccurate, it seems to
17 me that does go to the question of candor. And whether or
18 not they had some duty if they found out the day after they
19 sent the letter to the Commission saying we have 15
20 unlicensed paths, if they found out that that statement was
21 wrong the day after they sent the letter, whether or not
22 they had some duty not to wait until July 24th to correct
23 the mistake.

24 JUDGE SIPPEL: Well, I don't want to get into
25 characterizing the bottom line on that piece of evidence,

1 but certainly every time somebody makes a mistake and
2 submits it to the Commission, it doesn't mean that there's a
3 candor issue. That's not what we're here about. We're here
4 about there's intent and there's motive and there's a
5 possibility that maybe you're going to get something by
6 doing that. It reaches a point in time where, you know, if
7 you make a mistake, but there's no way that you're going to
8 gain by the mistake, in other words, after the horse is
9 after the barn so to speak, you know, you've got to pick up
10 the dirt and get it straightened out maybe. But that
11 doesn't seem to me to be a -- but my concern is that it
12 distracts from the real focus of where I want this hearing
13 to go and that's to this period of late April on back to
14 February. We've got two memorandum and there's a lot of,
15 there's a lot of undeveloped reasons as to why that
16 information was around and this thing didn't get done right,
17 why they were flawed activations when the information was
18 readily available to agents who had the responsibility for
19 seeing that the law was complied with. I just find that to
20 be a different scenario than what's going on here in June
21 and July.

22 MR. BECKNER: No, I understand that and I don't
23 mean to disagree with you. This is sort of another issue
24 and I understand what you're saying this is not one that
25 you're particularly desirous of getting into. And that is

1 the issue of what happened in June and July. So I
2 understand that.

3 JUDGE SIPPEL: Well, as I say, you've got a few
4 more days of testimony unless something else develops to get
5 my attention in that area, to have me focus on that in a way
6 different than I'm focusing on today. That's what this is
7 about. I don't want him to mislead anybody and I don't want
8 to invite a lot of proposed findings on something that I
9 don't feel are really worth the time, effort and energy to
10 do that. All right. Let's go onto the next subject.
11 Mr. Holt.

12 MR. HOLT: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. HOLT:

15 Q Mr. Nourain, I don't think we've had the occasion
16 to meet. My name is Christopher Holt and I'm representing
17 Cablevision of New York City-Phase I. Now, I'd like to
18 begin by asking you a few questions about the memorandum
19 dated April 26th, 1995 that you sent to Mr. Milstein that's
20 been admitted into evidence as Time Warner Cablevision
21 Exhibit 35.

22 A Yes, go ahead. I have it.

23 Q You that document?

24 A Yes.

25 Q I want to make sure I understand your testimony

1 correctly. Is it your testimony that all of the paths
2 listed on this memorandum were subject to some sort of
3 emissions designator problem?

4 A I'm just reviewing it.

5 Q Take your time.

6 JUDGE SIPPEL: Go off the record.

7 (Whereupon, a brief recess was taken.)

8 JUDGE SIPPEL: Back on the record.

9 THE WITNESS: The only way I can be sure is I have
10 to take a look at COMSEARCH's data sheet to make sure that
11 those emissions designated, the new ones would have been
12 underlined. But based on my memo, I would say yes. But I
13 have to see right now two years later, I have to see those
14 technical information which COMSEARCH did have with minor
15 changes designated. I have to take a look at that.

16 BY MR. HOLT:

17 Q So you have a document that you maintain in your
18 files that would allow you to check that?

19 A That could be on the actual file that Pepper &
20 Corazzini had. If there was an emission designator changes,
21 it would reflect onto the technical information. And it
22 should be in the file, yes.

23 Q Now, if you'll look at the first line of the memo,
24 it indicates that the paths listed below were delayed for
25 licensing due to emission designator changes.

1 A Yes.

2 Q Do you recall what process you went through to put
3 this list together?

4 A As emission I guess the number of times after my
5 discussion with Mike Lehmkuhl and my investigation after I
6 found the latter part of April I went through the documents
7 that I had and discussion with him and his documents. Then
8 I put this list together.

9 Q Would there have been any factor other than an
10 emissions designator factor that would have caused you to
11 list a path on this memo?

12 A I don't understand your question.

13 Q Aside from any problem having to do with emission
14 designator changes, is there any other factor that would
15 have caused you to list a path on this memo?

16 A Well, yes.

17 Q What factor would that have been?

18 A It's generally that I found out that some path has
19 not been filed, an STA has not been applied against it. And
20 if I found those paths, those would be here. The purpose of
21 this letter was to make sure that we are having STA on
22 whatever that we need to provide the service on.

23 Q So this list is not exclusively a list of paths
24 that have emission designator change problems?

25 A I need to compare that with Appendix A and find

1 out when that original filing by Pepper & Corazzini was on
2 that where it says date licensed applied.

3 Q Okay.

4 A And that I could have a better answer.

5 Q Could we do that by -- I will refer you to
6 exhibit, the Time Warner Cablevision Exhibit 30 which is the
7 Appendix A you just referred me to. Now, if you would, if
8 you could cross reference each address to let me know which
9 of those are subject to the emission designator change.

10 A I think those are the ones I just went over this
11 morning. Those are the same ones.

12 Q Okay. I don't believe that you made that kind of
13 comparison. I'd like to ask you to do that for us now.

14 JUDGE SIPPEL: What kind of a comparison?

15 MR. HOLT: I'd like him to identify the paths
16 listed on the April 26th memo that were subject to an
17 emission designator problem. He said he could do that by
18 referring to Appendix A.

19 THE WITNESS: Yes. Yes, all of these are the ones
20 under emission designator problems. Because I looked at it
21 this morning.

22 BY MR. HOLT:

23 Q How can you tell by referring to Appendix A?

24 A Because Appendix A talks about the date they were
25 filed and if you notice all of them are either December or

1 February, November of 1994. And that was when all of these
2 paths were originally studied by COMSEARCH which I mentioned
3 that that was in September, October. Therefore, because of
4 the emission designator problem found out after that, the
5 original files against these paths were not processed by the
6 Commission. So as such they corrected the emission
7 designator and the new filing was done against it. If you
8 notice that Appendix A, for example, talks about 35 Western
9 Avenue and -- see, that's a good question, a good one to --
10 yeah, and that's the one we have it as a 55 Western Avenue.
11 If you notice that that path was applied on 12/22/94.

12 JUDGE SIPPEL: That was a license application.

13 THE WITNESS: A license application. And that is
14 the one that Pepper & Corazzini would do that after the
15 COMSEARCH go through their process. It means that my
16 information to COMSEARCH should have been at least a month,
17 month and a half before that. That was the type of path
18 that all these emission designator issues are the path that
19 I did the study on '94.

20 BY MR. HOLT:

21 Q Okay. So I see that 35 West End Avenue, you refer
22 to Appendix A, 35 West End Ave. was filed on 12/22/94 and
23 then 639 West End Ave. was filed the same day.

24 A Yeah.

25 Q I don't see any other filings on the same day in

1 '94. Were there different batches of applications that were
2 filed at different times that had emission designator
3 problems?

4 A Well, the emission designator problem all came at
5 once because of the error that COMSEARCH was doing
6 throughout the last quarter of 1994. And then they all came
7 together.

8 Q So all applications filed during the last quarter
9 of '94 were subject to emission designator --

10 A That is correct.

11 Q Were only those that were filed 12/22/94?

12 A No, if you notice 11/7/94, 767 Fifth Avenue.
13 There are a lot more on 11/7/94. Such as 767 Fifth Avenue,
14 564 First Avenue, 545 First Avenue. Those are the ones that
15 my memo refers to as NYU residents. All of those paths
16 continue with that, 524 East 72nd Avenue, 25 West 54th
17 Avenue. Those are all December filings. That means the
18 practice of preparing Pepper & Corazzini we referred to at
19 least a month and a half, two months after I finished my
20 technical information. However, those were filed but
21 emission designator followed it up and they never filed
22 again.

23 Q For instance, I'm looking at Appendix A, 564 First
24 Avenue which was the license was applied for on November
25 7th, '94, I don't see that listed in your April 26th memo.

1 Have I overlooked it?

2 A I just mentioned to you that their NYU --

3 Q Oh, I'm sorry. NYU is 564?

4 A I mentioned that and a couple of hours ago again,
5 that's what I'm saying. I went through all of that when
6 Mr. Beckner was asking the questions.

7 Q Now, if you would refer to Time Warner Cablevision
8 Exhibit I believe it's 24. It's Michael Lehmkuhl's
9 memorandum to you -- I'm sorry, it is 34, Michael Lehmkuhl's
10 memorandum to you dated February 28th -- I'm sorry,
11 April 28th, 1995.

12 A Yes.

13 Q Do you have that in front of you? Now, if you'll
14 look at the second paragraph, second line, it indicates that
15 on March 21st, 1995, I amended all the applications that had
16 the incorrect emissions designator. Is that a correct
17 reading?

18 A On the second paragraph, on March 21st, 1995?

19 Q Right.

20 A Yes, that's correct.

21 Q Okay. Do you have any reason to believe that an
22 application filed after March 21st, 1995 would have had an
23 emission designator ever?

24 A Unless it was done by COMSEARCH, I would say at
25 this point no.

1 Q As of March 21st you were focused on the emission
2 designator issue, correct?

3 A Not exactly.

4 Q Well, the problems had been amended as of
5 March 21st, 1995.

6 A He did that, yes.

7 Q Right.

8 A Pepper & Corazzini.

9 Q Okay. I'd like to focus you back on Exhibit 30,
10 the Appendix A. And if you'll look at the bottom, there's a
11 receiver location that's identified as 2727 Palisades, Ave.,
12 correct?

13 A That's correct.

14 Q And it indicates that a license was applied for on
15 3/24/95.

16 A Yes.

17 Q And that would have been three days after Mike
18 Lehmkuhl amended the applications to correct the emissions
19 designator problem, right?

20 A No, that's not right. You're in error, sir.

21 Q Could you explain how I'm in error?

22 A Yes, because we have continued to design the
23 system and apply for a license for other paths besides the
24 emission designator proper path. The path such as this must
25 have been -- I don't have in front of me, some time maybe in

1 January, some time maybe in December, which by those were
2 not the ones that had emission designator problem on it.
3 The way I understood that it was only one time that
4 COMSEARCH went through the process and find out they made an
5 error to a bunch of paths, 20, 25 paths.

6 Q Okay. So 2727 Palisades was not a path with an
7 emissions problem, right?

8 A Absolutely not.

9 Q Okay. Now, my question then, and let me ask you
10 this. Let me focus on 200 East 32nd Street which was also
11 the license was applied for on 3/23/95, correct?

12 A Let me find it, sir. Yes, I found it.

13 Q And that one is also not subject to an emission
14 designator problem was it?

15 A It doesn't seem to be --

16 Q Okay.

17 A -- consistent with the other paths.

18 Q Okay. Now, if you turn back then to Time Warner
19 Cablevision Exhibit 35 which is your memo to Mr. Milstein,
20 do you have that in front of you?

21 A Yes, I do.

22 Q If you'll look, the second entry from the bottom
23 which is typewritten, do you see 2727 Palisades Ave. I'm
24 wondering why that was included in this memorandum if it was
25 not subject to an emissions designator problem.

1 A It might have been my error just added to it
2 because as I said I see that actual technical application
3 which has been done for 2727 Palisades. That's what I said,
4 I went over that.

5 Q You reviewed this with Michael Lehmkuhl, correct?

6 A Yes, I reviewed -- I reviewed this memo with
7 Michael Lehmkuhl?

8 Q You reviewed this information with Michael
9 Lehmkuhl, correct?

10 JUDGE SIPPEL: Number 35?

11 MR. HOLT: Yes.

12 THE WITNESS: No, I didn't review this
13 information. I went all over the whole process with Michael
14 Lehmkuhl before this.

15 BY MR. HOLT:

16 Q So you didn't review the information in this memo
17 with Michael Lehmkuhl?

18 Q With Michael Lehmkuhl, no. No, we didn't review
19 this particular memo, no.

20 Q So you didn't ask Michael Lehmkuhl to provide you
21 with any information concerning the status of the paths
22 listed on this memo?

23 A Your Honor, I have to explain a little more than
24 just yes or no.

25 JUDGE SIPPEL: Well, that's all right. But just

1 factually what you recall.

2 THE WITNESS: Yes, yes. At the time my discussion
3 with Michael Lehmkuhl was verbal over all the projects. And
4 at that point we understood that what path -- I ask him for,
5 give me some kind of inventory, which he did on April 28th.

6 BY MR. HOLT:

7 Q After this memo, correct?

8 A After this memo, he gave me this information, but
9 before this memo I discussed things with him.

10 Q Okay.

11 A So as the result of that, I generated, I went over
12 that and generated this memo after, as a result of that and
13 I put those building with designator problems. The 2727
14 Palisades, it could be a part of the emissions designator.
15 I'm just saying that right now today when I'm looking at
16 these, I say that it's not consistent with the other ones
17 which were done in 1994.

18 But if I clear that path on January 21st, it could
19 still be under the emission designator problem. Because the
20 emission designator according to Michael Lehmkuhl's
21 February, I mean, April 28th, was talking about after March
22 21st. Anything which was cleared before March 21st could be
23 part of that emission designator problem by COMSEARCH.

24 That's what I'm saying.

25 Q You also -- this memo lists 200 East 32nd Street

1 as a path subject --

2 A Yes.

3 Q -- to emission designator. Earlier your testimony
4 was you were positive they were not part of the emission
5 designator problem. I'm confused. Which is it?

6 A I'm positive it wasn't because the date of the
7 file says 3/28/95 and Mr. Lehmkuhl's letter of March --
8 April 28th says March 21st, 1995.

9 Q Correct.

10 A So it's just not -- within a day, a couple of
11 days. That came in. It takes Michael Lehmkuhl more than
12 two days to be able to get those emission designator and
13 apply for a file. As His Honor said I just -- logic. But
14 all of these questions I've got to get, if I get information
15 on those emission designator paths, I could clear all these.
16 It's just very easy. We can just get that.

17 Q You spoke to, so you spoke to Michael Lehmkuhl
18 prior to the time that you drafted this memorandum?

19 A I repeat that five times that, yes, I did.

20 Q And during that conversation, did he relay
21 information to you about the status of the paths listed on
22 this memorandum?

23 A As a general rule after April 28th we discussed
24 everything with Michael Lehmkuhl about everything, sir.

25 Q My question was imprecise. With respect to the

1 first conversation that you had with Michael Lehmkuhl which
2 you said resulted in the generation of this memo, right?

3 A Generation of which memo?

4 Q You created this memo after you conversation with
5 Michael Lehmkuhl.

6 A The creation of this memo was that after I
7 discussed in the meeting with Mr. Milstein, he wanted to
8 know if I discussed everything with Michael Lehmkuhl and
9 they're going to do the STA. And as such I wrote that memo.

10 Q Okay. Did Mr. Milstein provide you with a list of
11 buildings to investigate?

12 A No.

13 Q Did anyone else at Liberty provide you with a list
14 of buildings to investigate?

15 A I don't understand your question.

16 Q I'm asking, I'm sorry. I didn't mean to cut you
17 off. Were you finished?

18 A I just don't understand what you mean by the list.

19 Q Were you provided by anyone at Liberty,
20 Mr. Milstein, Mr. Price, Mr. Ontiveros, with a list of
21 buildings to investigate that with respect to the operation
22 of unauthorized paths?

23 A The only information that I had as I mentioned
24 something came which had Time Warner's name on it. And
25 based on that, I started to investigate and then what paths

1 and talked with Michael Lehmkuhl.

2 Q And did you use that --

3 JUDGE SIPPEL: Listen, can you just listen to his
4 question? He's asking you to take these people one at a
5 time. Did you receive a list, a partial list, or any kind
6 of identification of buildings and/or paths from
7 Mr. Ontiveros before you put together this April 26th memo?

8 THE WITNESS: The only, the only list that I know
9 I received was one internal list. I don't know if I
10 received them from Mr. Ontiveros as I said or someone else
11 internally.

12 JUDGE SIPPEL: So your answer is you don't know.
13 Your answer would be the same if I asked you that question
14 with respect to Mr. Price?

15 THE WITNESS: Both are the same, to me they both
16 were the same lists. That's correct.

17 BY MR. HOLT:

18 Q And when you received this list, did you call
19 Mr. Lehmkuhl right away or what did you do with the list?

20 A You're referring to the list. I'm referring to a
21 piece of paper which I had which was generalized saying that
22 Time Warner has some petition for some of the buildings.
23 And I investigated the list with Mr. Lehmkuhl. I did not
24 have any list in -- it was what I have and what I discussed
25 with Mr. Lehmkuhl.

1 Q Do you recall whether that list included
2 2727 Palisades Ave.?

3 A I don't recall right now

4 Q Do you recall whether it included 200 East 32nd
5 Street?

6 A I don't recall.

7 Q So you would agree though that 2727 Palisades Ave.
8 was not delayed for licensing due to emission designator
9 change?

10 A No, I don't agree to that. I said I don't recall.

11 Q Well, the application for license was filed after
12 March 21st, 1995 when the amendment was filed for the
13 emission designator problems.

14 A Yeah, but there were other file -- the other
15 application was filed during January, December, all the
16 other ones could be filed and did not have an emission
17 designator problem. So your question the way I understand
18 it was everything was filed after let's say December or
19 September, October, emission designator problem. My answer
20 to that is I don't believe so.

21 Q No, I'm focusing on 2727 Palisades.

22 A I don't recall anything about 2727 Palisades
23 unless I see the technical data sheet that I received from
24 COMSEARCH just exactly what date it was and is that
25 underlined that emission designator has been changed.

1 Because every time some of those data sheets are changed,
2 they were underlined.

3 Q Well, the 2727 Palisades application according to
4 Appendix A was filed on 3/24/95. And your memo was prepared
5 April 26th, 1995. It looks like you commenced service on
6 April 24, '95, two days before this memo. Is that correct?

7 A That's what it says. I didn't generate these
8 dates.

9 Q And you knew as of the date of this memo that you
10 weren't operating 2727 Palisades with any STA, right?

11 A What is the date of this memo?

12 Q I'm sorry, it's Time Warner Cablevision
13 Exhibit 35.

14 JUDGE SIPPEL: That's your memo of April 26th.

15 THE WITNESS: You're talking about the date of
16 that appendix.

17 BY MR. HOLT:

18 Q The date of the appendix indicates that you began
19 operation of 2727 Palisades on April 24th, 1995.

20 A Yes.

21 Q Which was two days prior to the date of the memo
22 you sent to Mr. Milstein on April 26th, right?

23 A That's what it says, yes.

24 Q And you knew at the time that you sent this memo
25 to Mr. Milstein that it was not operating 2727 Palisades